

REMARKS

Claim 17 stands rejected under 35 USC 103 as being unpatentable over Benefiel et al., in view of Spangrud et al.

The rejection states:

Benefiel et al. disclose a beverage dispenser comprising a semi-rigid hollow straw having two open ends, the straw having side walls with a minimum thickness and the straw being substantially open from end to end and removable end caps 36 on each of the two open ends, and the dispenser being filled with an agent 20.

It is pointed out that Benefiel does disclose a straw which has retained therein by blocking structure or grids a granulated therapeutic agent retained by the grid containing granules or particles of therapeutic agent 20. The tube does not contain a beverage as asserted. Particles or granules do not constitute a beverage. Additionally, the presence of grid structure to maintain those particles in position do not constitute a

“said straw being substantially open from end to end.”

It is emphasized that the particles or granules of therapeutic agent do not constitute a beverage and particularly a beverage “selected from the group consisting of jellied drinks, granatas, slushes, and precursors thereof.” It should be additionally noted that the granules or particles within the Benefiel reference are not dispensed

“in either direction from said straw by application of positive pressure at one end of said two open ends and an application of negative pressure at the other of said two open ends.”

Benefiel et al. is dispensing utilizing only negative pressure, i.e., sucking by the patient being treated with the therapeutic particles or granules. Additionally, Benefiel et al. is only operable in one direction as opposed to

“dispensed in either direction from said straw.”

The Examiner notes that the structural thickness limitation is not met by Benefiel et al., and combines, with no apparent reason for so doing, a reference to Spangrud et al. which is directed to a water filtration device containing granular activated charcoal impregnated with silver, also located between layers of mechanical filter media. It is submitted that if one were to fairly combine the teaching of Spangrud et al. with those of Benefiel et al. one would end up with a straw having both therapeutic granules or particulate, as well as a filtration medium which would still be operable in only one direction. Apparently this would be useful when receiving therapeutic treatment while in an area where water quality is unsatisfactory.

Any fair combinations of the teachings is not going to result in applicants' claimed subject matter of a straw

"being substantially open end to end"

and containing

**"a beverage selected from the group consisting of
jellied drinks, granatas, slushes, and precursors
thereof"**

and which is capable of dispensing in either direction.

Both references have only uni directional capability, and indeed Benefiel et al. even calls for "a one-way valve such as a flap valve, a duck-bill valve or a ball-and-seat type arrangement" (col. 6, lines 23-25). It is submitted that any modification of either of the references to arrive at applicants' "being substantially open from end to end" is a destruction of the fair teachings and a clear indication of hindsight.

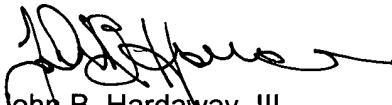
It is submitted that on structural limitations alone, applicants' claimed subject matter is novel and unobvious over the applied art.

Ceding that the Examiner is correct with regard to the method of using the device, it is submitted that the statement "the types of beverages as recited would have been a matter of design choice." It is submitted that neither reference discloses a

beverage contained in the straw, but utilizes the straw as straws are normally utilized to extract a liquid from a container. Applicant recites specific beverages contained within the straw, and it is the burden of the Examiner to show such positive recitation of structure would have been obvious to one of ordinary skill in the art at the time the invention was made. The Examiner has not satisfied this burden by a mere recitation of a design choice thinking that one of skill in the art would place either a therapeutic granule particles or filtration media with applicants' specifically claimed beverages of "jellied drinks, granatas, slushes, and precursors thereof."

For the above reasons reconsideration and withdrawal of the Rejection of Record is respectfully requested and an early notice to this affect is solicited.

Respectfully submitted,


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I hereby CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope address to: Assistant Commissioner for Patents, Washington, DC 20231.

Date: January 4 2007

by: John B. Hardaway III